

**Selected Documents from Claim File**

**Claim No. LRF-1997-1117-01**

## CLAIM PAYMENT CHECKLIST

### I. General Information

LRF Claim No: <u>LRF 1997-1117-01</u>	Related Claim Nos: <u>LRF 1998-0102-01, LRF 1998-0102-02, LRF 1998-0102-03, LRF 1998-0102-04, LRF 1998-0102-05, LRF 1998-0102-06, LRF 1998-0102-07, LRF 1998-0102-08, LRF 1998-0102-09, LRF 1998-0102-10, LRF 1998-0102-11, LRF 1998-0102-12, LRF 1998-0102-13, LRF 1998-0102-14, LRF 1998-0102-15, LRF 1998-0102-16, LRF 1998-0102-17, LRF 1998-0102-18, LRF 1998-0102-19</u>
1. Claimant: Name: <u>J &amp; J Building Supply, Inc.</u> Address: <u>180 North 300 East</u> City, State, Zip: <u>St. George, UT 84770</u> Telephone: <u>(435) 634-2204</u> DOPL/LRF No: <u>96-326045-5501</u>	
2. Claimant's Legal Counsel: Name/Law Firm: <u>Terry L. Wade -- Snow, Nuffer, Engstrom, Drake, Wade &amp; Smart</u> Address: <u>90 West 200 North, P.O. Box 400</u> City, State, Zip: <u>St. George, UT 94770-0400</u> Telephone: <u>(435) 674-0400</u>	
3. Non-Paying Party/Permissive Party: (Entered Appearance <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No) Name: <u>Interior Structures, Inc.</u> Address: <u>929 West Sunset Boulevard 21-102</u> City, State, Zip: <u>St. George, UT 84770</u> Telephone: <u>Unknown</u> DOPL No: <u>96-321584-5501 (ALS)</u>	
4. Non-Paying Party/Permissive Party's Legal Counsel: Name/Law Firm: <u>William Thomas Thurman -- McKay, Burton &amp; Thurman</u> Address: <u>#10 East South Temple Street #600</u> City, State, Zip: <u>Salt Lake City, UT 84133</u> Telephone: <u>(801) 521-4135</u>	
5. Amount claimed: <u>\$2,674.00 (p. 2)</u>	
6. Owner: Name: <u>Tom N. Bailey and Jennifer Bailey</u> Address: <u>2338 S. Coletero Circle</u> City, State, Zip: <u>Washington, UT 84780</u> Telephone: <u>Unknown</u>	

CR15-19984

<b>7. Owner-Occupied Residence:</b> Address/Location: <u>2338 South Coletero Circle, Washington, UT 84780 (p. 14-15)</u> Legal Description: <u>All of lot One Hundred Three (103), Pine View Estates, Phase 5, according to the official Plat thereof, as filed in the Office of the Recorder of Washington county, State of Utah. (p. 4)</u>																																								
<b>8. Original Contractor:</b> Name: <u>Aaron Needham d/b/a D.T. Development Inc.</u> Address: <u>720 South River Road St. E200</u> City, State, Zip: <u>St. George, UT 84790</u> Telephone: <u>(435) 674-6037</u> DOPL No: <u>97-340109-5501 (ALS)</u>																																								
<b>9. Claim Classification:</b> <input checked="" type="checkbox"/> Formal <input type="checkbox"/> Informal																																								
<b>10. Qualifying Information:</b>	Yes	No																																						
Has claimant previously applied for or received a payment from the fund? Comments: <u>Claimant has filed 19 other claims with the fund against non paying party Interior Structures, Inc.:</u>  <table style="width: 100%; border-collapse: collapse;"> <tr><td style="border-bottom: 1px solid black;">LRF 1998-0102-01, (McEntire)</td><td style="border-bottom: 1px solid black; text-align: right;">\$2,219.13 claimed</td></tr> <tr><td style="border-bottom: 1px solid black;">LRF 1998-0102-02, (Jones)</td><td style="border-bottom: 1px solid black; text-align: right;">\$3,255.98 claimed</td></tr> <tr><td style="border-bottom: 1px solid black;">LRF 1998-0102-03, (Baker/Bunting)</td><td style="border-bottom: 1px solid black; text-align: right;">\$1,506.64 claimed</td></tr> <tr><td style="border-bottom: 1px solid black;">LRF 1998-0102-04, (Leifson)</td><td style="border-bottom: 1px solid black; text-align: right;">\$1,822.63 claimed</td></tr> <tr><td style="border-bottom: 1px solid black;">LRF 1998-0102-05, (Vance)</td><td style="border-bottom: 1px solid black; text-align: right;">\$1,787.68 claimed</td></tr> <tr><td style="border-bottom: 1px solid black;">LRF 1998-0102-06, (Prisbey)</td><td style="border-bottom: 1px solid black; text-align: right;">\$2,105.37 claimed</td></tr> <tr><td style="border-bottom: 1px solid black;">LRF 1998-0102-07, (Terry)</td><td style="border-bottom: 1px solid black; text-align: right;">\$3,058.64 claimed</td></tr> <tr><td style="border-bottom: 1px solid black;">LRF 1998-0102-08, (Secrist)</td><td style="border-bottom: 1px solid black; text-align: right;">\$1,780.53 claimed</td></tr> <tr><td style="border-bottom: 1px solid black;">LRF 1998-0102-09, (Van Soest)</td><td style="border-bottom: 1px solid black; text-align: right;">\$778.41 claimed</td></tr> <tr><td style="border-bottom: 1px solid black;">LRF 1998-0102-10, (Zastro)</td><td style="border-bottom: 1px solid black; text-align: right;">\$2,284.05 claimed</td></tr> <tr><td style="border-bottom: 1px solid black;">LRF 1998-0102-11, (?)</td><td style="border-bottom: 1px solid black; text-align: right;">\$1,489.99 claimed</td></tr> <tr><td style="border-bottom: 1px solid black;">LRF 1998-0102-12, (Perez)</td><td style="border-bottom: 1px solid black; text-align: right;">\$1,313.32 claimed</td></tr> <tr><td style="border-bottom: 1px solid black;">LRF 1998-0102-13, (?)</td><td style="border-bottom: 1px solid black; text-align: right;">\$1,538.91 claimed</td></tr> <tr><td style="border-bottom: 1px solid black;">LRF 1998-0102-14, (Pocock)</td><td style="border-bottom: 1px solid black; text-align: right;">\$1,940.66 claimed</td></tr> <tr><td style="border-bottom: 1px solid black;">LRF 1998-0102-15, (Toriz)</td><td style="border-bottom: 1px solid black; text-align: right;">\$2,030.89 claimed</td></tr> <tr><td style="border-bottom: 1px solid black;">LRF 1998-0102-16, (Ball)</td><td style="border-bottom: 1px solid black; text-align: right;">\$4,076.93 claimed</td></tr> <tr><td style="border-bottom: 1px solid black;">LRF 1998-0102-17, (Banks)</td><td style="border-bottom: 1px solid black; text-align: right;">\$2,161.46 claimed</td></tr> <tr><td style="border-bottom: 1px solid black;">LRF 1998-0102-18, (Hardy)</td><td style="border-bottom: 1px solid black; text-align: right;">\$2,177.78 claimed</td></tr> <tr><td style="border-bottom: 1px solid black;">LRF 1998-0102-19, (Haycock)</td><td style="border-bottom: 1px solid black; text-align: right;">\$1,874.92 claimed</td></tr> </table>	LRF 1998-0102-01, (McEntire)	\$2,219.13 claimed	LRF 1998-0102-02, (Jones)	\$3,255.98 claimed	LRF 1998-0102-03, (Baker/Bunting)	\$1,506.64 claimed	LRF 1998-0102-04, (Leifson)	\$1,822.63 claimed	LRF 1998-0102-05, (Vance)	\$1,787.68 claimed	LRF 1998-0102-06, (Prisbey)	\$2,105.37 claimed	LRF 1998-0102-07, (Terry)	\$3,058.64 claimed	LRF 1998-0102-08, (Secrist)	\$1,780.53 claimed	LRF 1998-0102-09, (Van Soest)	\$778.41 claimed	LRF 1998-0102-10, (Zastro)	\$2,284.05 claimed	LRF 1998-0102-11, (?)	\$1,489.99 claimed	LRF 1998-0102-12, (Perez)	\$1,313.32 claimed	LRF 1998-0102-13, (?)	\$1,538.91 claimed	LRF 1998-0102-14, (Pocock)	\$1,940.66 claimed	LRF 1998-0102-15, (Toriz)	\$2,030.89 claimed	LRF 1998-0102-16, (Ball)	\$4,076.93 claimed	LRF 1998-0102-17, (Banks)	\$2,161.46 claimed	LRF 1998-0102-18, (Hardy)	\$2,177.78 claimed	LRF 1998-0102-19, (Haycock)	\$1,874.92 claimed	YES	
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Has the fund made any unreimbursed payments on behalf of claimant? Comments: _____		NO																																						

## II. Claim Processing Information

Initial Claim Processing -- All Claims:	Received	Forwarded
Front Desk	11/17/97	11/24/97
LRF Specialist--set up file, notice of filing	11/24/97	11/24/97
Permissive Party response Deadline: <u>12/17/97</u>	11/24/97	12/01/97
Date referred to Investigations: Outcome: <u>Incident #18705</u>	03/17/98	
LRF Specialist/Claims Examiner--screening, denial letter. Reason(s) for denial: <u>Claimant has not made a showing that the original contractor was licensed at the time that the owners entered into a contract for the construction of the residence, and at the time that claimant provided qualified services (although original contractor obtained his license prior to completion of construction on the residence). This matter has been reviewed by AAG Tony Patterson who believes the entire file should be noticed up for hearing with the Board on this issue as well as payment should the Bd decide that the Fund should pay the claim regardless of the original contractor's licensing problems. Patterson will recommend denial.</u>	03/17/98	03/31/98
LRF Coordinator--review of denial letter	03/17/98	03/18/98
Claimant--response to c/d letter Deadline: _____		
Claims Examiner--review of response		
Claims Examiner--substantive review. Recommendation for disposition: _____		
LRF Coordinator/Enforcement Counsel--review		
Informal Claim/Summary Disposition of Formal Claim Only:	Received	Forwarded
LRF Claims Examiner--disposition letter	03/17/98	03/17/98
LRF Coordinator--review of disposition letter		
Enforcement Counsel--review of disposition letter		

Section's Recommended Disposition:

☐ Approve for full payment ☐ Approve for partial payment ☒ Deny ☐ Dismiss

Date: 03/31/98

Reason: Claimant has not shown that original contractor was licensed. 5/28/98: In the event that the Board determines this claim is payable, Section VII below shows the payment schedule. The negative \$802.26 difference between amount claimed and amount payable is due to claimant inadvertently adding finance charges to its claim for qualified services, the calculation of interest pursuant to the 5% maximum rule, and application of the 33% maximum attorney fee rule.

Board's Recommended Disposition:

☐ Approve for full payment ☐ Approve for partial payment ☐ Deny ☐ Dismiss

Date: \_\_\_\_\_

Reason(s): \_\_\_\_\_

Formal Claim Approved for Hearing Only:	Received	Forwarded
LRF Specialist--schedule hearing		
Board--hear claim		
ALJ--draft recommended findings and conclusions		
Claims Examiner/Coordinator--draft order & correspondence		
LRF Coordinator/Enforcement Counsel--review		
Division Director--approve order		

Final Order--All Claims:

☐ Approve for full payment ☐ Approve for partial payment ☐ Deny ☐ Dismiss

Date: \_\_\_\_\_

Reason(s): \_\_\_\_\_

If Order is approved for full or partial payment:

Payment amount: \_\_\_\_\_

Date payment request forwarded to Finance: \_\_\_\_\_

Date notice of payment sent to non-paying party: \_\_\_\_\_

Deadline for non-paying party's reimbursement: \_\_\_\_\_

Date claim referred for subrogation action: \_\_\_\_\_

Outcome of subrogation action: \_\_\_\_\_

Date non-paying party referred to Investigations: \_\_\_\_\_

Nature/outcome of disciplinary action: \_\_\_\_\_

If Order is fully or partially denied:

Reason(s) for denial: \_\_\_\_\_

Appeal deadline: \_\_\_\_\_

Date request for agency review filed: \_\_\_\_\_

Deadline for claimant's brief: \_\_\_\_\_

Deadline for Division's brief: \_\_\_\_\_

Date/Nature of Order: \_\_\_\_\_

### III. Jurisdiction Checklist

Y/N	Inits	Date	
YES	mam	03/17/98	<b>Is Application Jurisdictionally Sound?</b>
YES	mam	03/17/98	<p>A. Claimant brought civil action against the non-paying party within 180 days from the last day claimant provided qualified services, which action was to recover monies owed him for the services, or was precluded from doing so by the non-paying party's bankruptcy filing within 180 days of claimant's completion of qualified services. (38-11-204(3)(d)(i)(A) and (38-11-204(3)(e)). <u>Claimant provided services 6/6/97-6/18/97 (Claim file, pp. 2, 20-24), and non-paying party, Interior Structures, Inc. ("ISI"), filed Chapter 11 Bankruptcy on 9/5/97, only 79 days later. (Claim file, p. 18).</u></p>
n/a	mam	03/17/98	<p>B. If civil action filing is required, notice of commencement of action was timely filed within 30 days of claimant's filing of civil action. (38-11-204(3)(d)(i)(B))</p>
YES	mam	03/17/98	<p>C. Claim application was timely filed within 120 days of the civil judgment or bankruptcy filing. (38-11-204(2)). <u>Claim application was filed on 11/17/97, only 73 days after filing of Chapter 11 Bankruptcy on 9/5/97.</u></p>

### IV. Complete Application Checklist

Y/N	Inits	Date	
YES	mam	03/17/98	<b>Is Application Complete?</b>
YES	mam	03/17/98	A. Form submitted. (38-11-204(1)(c))
YES	mam	03/17/98	B. Form completed. (38-11-204(1)(c))
YES	mam	03/17/98	<p>C. Application fee submitted. (38-11-204(1)(b)) ICN No: <u>7322610019</u></p>
YES	mam	03/17/98	D. Supporting documents submitted. (38-11-204(1)(c))
YES	mam	03/17/98	<div style="background-color: #cccccc; width: 50px; height: 20px; display: inline-block;"></div> 1. Evidence of written owner contract (R156-38-204a(1))

YES	mam	03/17/98		a. Written contract between owner and original contractor/real estate developer; (R156-38-204a(1)(a)(i) and (ii)) or
n/a	mam	03/17/98		b. Civil judgment with appropriate findings. (R156-38-204a(1)(b)) or
n/a	mam	03/17/98		c. Affidavit that claimant was precluded from obtaining a copy of the contract <u>and</u> a civil judgment. and
n/a	mam	03/17/98		d. Independent evidence.
YES	mam	03/17/98		2. Evidence of building permit compliance: (R156-38-204a(2))
YES	mam	03/17/98		a. Building permit; (R156-38-204a(2)(a)) or
n/a	mam	03/17/98		b. Letter that building permit is not required. (R156-38-204a(2)(b))
NO	mam	03/17/98		3. Evidence of compliance with licensing statute: (R156-38-204a(3))
NO	mam	03/17/98		a. Original contractor is licensed; (R156-38-204a(3)) or <u>See notes in substantive findings re/original contractor was not yet licensed at time claimant provided services.</u>
n/a	mam	03/17/98		b. Original contractor is unlicensed, and
n/a	mam	03/17/98		documentation of exemption from licensure; (R156-38-204a(3)) or
n/a	mam	03/17/98		c. Real estate developer.
YES	mam	03/17/98		4. Evidence that owner paid original contractor/real estate developer in full: (R156-38-204a(4))

YES	mam	03/17/98		a. Affidavit from original contractor/real estate developer; (R156-38-204a(4)(a)) or
n/a	mam	03/17/98		b. Civil judgment with appropriate finding; (R156-38-204a(4)(b)) or
n/a	mam	03/17/98		c. Affidavit that claimant was precluded from obtaining an affidavit or civil judgment, (R156-38-204a(4)(c)) and
n/a	mam	03/17/98		independent evidence. (R156-38-204a(4)(c))
YES	mam	03/17/98		5. Evidence that claimant brought civil action against original contractor/real estate developer: (R156-38-204a(5))
n/a	mam	03/17/98		a. Complaint, (R156-38-204a(5)(a)) and
n/a	mam	03/17/98		Notice of Commencement of Action; (R156-38-204a(5)(b)) or
YES	mam	03/17/98		b. Non-paying party's bankruptcy filing. (R156-38-204a(5)(c))
YES	mam	03/17/98		6. Evidence that non-paying party failed to pay claimant: (R156-38-204a(6))
n/a	mam	03/17/98		a. Civil judgment with appropriate finding; (R156-38-204a(6)(a)) or
YES	mam	03/17/98		b. Non-paying party's bankruptcy filing, (R156-38-204a(6)(b)) and
YES	mam	03/17/98		Independent evidence. (R156-38-204a(6)(b))

YES	mam	03/17/98		7. Evidence that claimant made a reasonable attempt to collect the judgment from the non-paying party, or was precluded from doing so by the non-paying party's bankruptcy filing: (R156-38-204a(7))
n/a	mam	03/17/98		a. Supplemental order, (R156-38-204a(7)(a)) and
n/a	mam	03/17/98		b. Return of service of supplemental order, (R156-38-204a(7)(b)) and
n/a	mam	03/17/98		c. If assets identified, Writ of Execution, (R156-38-204a(7)(c)) and
n/a	mam	03/17/98		d. If assets identified, Return of Execution; (R156-38-204a(7)(d)) or
YES	mam	03/17/98		e. Non-paying party's bankruptcy filing. (R156-38-204a(7)(e))
YES	mam	03/17/98		8. Evidence that the residence is an owner-occupied residence: (R156-38-204a(1)(a)(i) and (ii))
YES	mam	03/17/98		a. Owner-Occupied Residence Affidavit; (R156-204a(1)(i) and (ii)) or
n/a	mam	03/17/98		b. Evidence that claimant was unable to obtain an Owner-Occupied Residence Affidavit, and
n/a	mam	03/17/98		Independent evidence.
YES	mam	03/17/98		E. Signed Certification and Affidavit. (38-11-204(3)(e))
YES	mam	03/17/98		F. Completed Certificate of Service. (R156-38-105(5)) and (6))
YES	mam	03/17/98		G. Completed Demographic Questionnaire.

## V. Required Factual Findings

Y/N	Inits	Date	
NO	mam	03/17/98	<b>Does Claim Meet Findings Required Under § 38-11-203(1)?</b>
YES	mam	03/31/98	<p>A. Claimant was a qualified beneficiary during the construction on the residence. (38-11-203(1)(a))</p> <p><u>Claimant registered with the Fund as of 7/29/96, (LRF database). Qualified Services were provided 6/697 through 6/18/97. (Claim file, pp. 2, 19-24). Therefore, claimant was a qualified beneficiary during construction on the residence.</u></p>
YES	mam	03/31/98	<p>B. Owner contracted with an original contractor for construction on the residence, or with a real estate developer for the purchase of the subject residence. (38-11-102(12)).</p> <p><u>A contract for construction of the residence with improvements was entered into between original contractor and owners on 4/24/997. (Claim file, pp. 12-13).</u></p>
YES	mam	03/31/98	<p>C. Owner entered into a written contract for qualified services with the original contractor/real estate developer. (38-11-204(3)(a))</p> <p><u>See note above in B.</u></p>

NO	mam	03/17/98	<p>D. Original contractor was licensed or exempt from licensure at time of contract. (38-11-204(3)(a)(i))</p> <p><u>ALS records show that original contractor Aaron Needham d/b/a D. T. Development, Inc., did not obtain his contractor's license from DOPL until June 24, 1997. A building permit was issued on 4/22/97, although the permit was approved and likely effective on 4/10/97. (Claim file, p. 16). The owner and original contractor entered into a written contract for construction of the residence on 4/24/97, and construction was to start "at the earliest practicable time after the execution of these premises". (Claim file, pp. 12-13). The claimant provided services under a contract between claimant and non-paying party, ISI, from 6/7/97 through 6/18/97. (Claim file, pp. 2, 20-24, and 28). Although original contractor became licensed during the construction of the residence and prior to completion of the residence on 8/15/97 (Claim file, pp. 6, 14-15), he was not licensed at the time the owners contracted for the construction of the residence, and at the time claimant provided services.</u></p> <p><u>Given, the above, claimant has not made the required showing under 38-11-204(3)(a)(i), and thus cannot be paid by the Fund for his services.</u></p>
YES	mam	03/31/98	<p>E. Building permit was obtained if required. (38-11-204(3)(b))</p> <p><u>Bldg. permit was issued by Washington City. on 4/22/97. (Claim file p. 16).</u></p>
YES	mam	03/31/98	<p>F. Owner paid original contractor/real estate developer in full in accordance with the written contract and any amendments to it. (38-11-204(3)(c))</p> <p><u>See affidavit of original contractor, Aaron Needham, dated 10/29/97, acknowledging full payment. (Claim file, p. 17).</u></p>
YES	mam	03/31/98	<p>G. Owner or his tenant or lessee occupied the subject residence as a primary or secondary residence within 180 days from the date of completion of construction. (38-11-102(13)).</p> <p><u>Owner-occupied residence affidavits signed by the Baileys state that construction was completed 8/15/97, and that the Baileys began occupying the residence on the same date. (Claim file, pp. 14-15).</u></p>

YES	mam	03/31/98	H. If subsequent owner is involved, subsequent owner purchased residence from owner within 180 days from the date of completion of construction. (38-11-102(18)) <u>There is no subsequent owner in this case, per owner-occupied residence affidavits. (Claim file, pp. 14-15).</u>
YES	mam	03/31/98	I. Residence is a detached single family or duplex residence. (38-11-102(17)) <u>The contract between Needham and Baileys, the building permit, the Baileys' owner-occupied residence affidavits, and the affidavit of Aaron Needham, all state that the residence is a single family dwelling. (Claim file, pp.12-17)</u>
YES	mam	03/31/98	J. Contract between claimant and original contractor, subcontractor, or real estate developer was for qualified services. (38-11-204(3)(a)(i) and (c), 38-11-102(15)) <u>Claimant states that it provided "materials and services to Interior Structures, Inc., for work in construction on real property". (Claim file, p. 2) This is corroborated by Invoices from claimant for sheetrock, cement, tape, delivery, etc. (Claim file, pp. 20-24)</u>
YES	mam	03/31/98	K. Claimant obtained a judgment against the non-paying party, which judgment indicates that claimant is entitled to payment by the non-paying party under an agreement to perform qualified services and was not paid for the services, or was precluded from obtaining a judgment by the non-paying party's bankruptcy filing. (Note that the non-paying party can be an original contractor, a subcontractor or supplier who contracted with the original contractor, or a subcontractor or supplier who contracted with a subcontractor or supplier.) (38-11-204(3)(c) and (d)(ii)) <u>Claimant provided services from 6/7/97- 6/18/97, (Claim file, pp. 2, 20-24), and Chapter 11 Bankruptcy was filed 79 days later by ISI on 9/5/97, (Claim file, p. 18), thus precluding claimant from obtaining a civil judgment within the 180 day requirement..</u>
YES	mam	03/31/98	L. Claimant made a reasonable attempt to collect its judgment from the non-paying party, or was precluded from doing so by the non-paying party's bankruptcy filing. (38-11-204(3)(d)(iii) and (iv)) <u>Claimant was precluded from obtaining and collecting its judgment by ISI's bankruptcy filing. See K. above.</u>

YES	mam	03/31/98	M. Claimant is not entitled to reimbursement from another person. (38-11-204(3)(e)) <u>See Affidavit and Certification signed by claimant's attorney on 11/14/97. (Claim file, p. 6)</u>
YES	mam	03/31/98	N. There is adequate money in the Fund to pay the amount recommended. (38-11-203(1)(c)) (Current PTIF report)

#### VI. Statutory Limitation on Claim Payment

Y/N	Inits	Date	
YES	mam	03/31/98	<b>There are no statutory limitations on the amount of payment.</b>
YES	mam	03/31/98	A. Amount of claims pending on this residence, as shown by previously filed notices of commencement of action, is less than or equal to \$75,000. (38-11-203(4)(a)(i)) <u>No other claims or notices of commencement of action have been filed regarding the Bailey property.</u>

YES	mam	03/31/98	<p>B. Amount of money paid to claimant on prior claims plus amount to be paid on current claim is less than or equal to \$500,000. (38-11-203(4)(a)(ii))</p> <p><u>Claimant has filed this and 19 other claims with the fund against non paying party Interior Structures, Inc, a total of \$41,877.92:</u></p> <table><tr><td><u>LRF 1998-0102-01, (McEntire)</u></td><td><u>\$2,219.13</u></td><td><u>pending</u></td></tr><tr><td><u>LRF 1998-0102-02, (Jones)</u></td><td><u>\$3,255.98</u></td><td><u>pending</u></td></tr><tr><td><u>LRF 1998-0102-03, (Baker/Bunting)</u></td><td><u>\$1,506.64</u></td><td><u>pending</u></td></tr><tr><td><u>LRF 1998-0102-04, (Leifson)</u></td><td><u>\$1,822.63</u></td><td><u>pending</u></td></tr><tr><td><u>LRF 1998-0102-05, (Vance)</u></td><td><u>\$1,787.68</u></td><td><u>pending</u></td></tr><tr><td><u>LRF 1998-0102-06, (Prisbey)</u></td><td><u>\$2,105.37</u></td><td><u>pending</u></td></tr><tr><td><u>LRF 1998-0102-07, (Terry),</u></td><td><u>\$3,058.64</u></td><td><u>pending</u></td></tr><tr><td><u>LRF 1998-0102-08, (Secrist),</u></td><td><u>\$1,780.53</u></td><td><u>pending</u></td></tr><tr><td><u>LRF 1998-0102-09, (Van Soest)</u></td><td><u>\$778.41</u></td><td><u>pending</u></td></tr><tr><td><u>LRF 1998-0102-10, (Zastro)</u></td><td><u>\$2,284.05</u></td><td><u>pending</u></td></tr><tr><td><u>LRF 1998-0102-11, (?)</u></td><td><u>\$1,489.99</u></td><td><u>pending</u></td></tr><tr><td><u>LRF 1998-0102-12, (Perez)</u></td><td><u>\$1,313.32</u></td><td><u>pending</u></td></tr><tr><td><u>LRF 1998-0102-13, (?)</u></td><td><u>\$1,538.91</u></td><td><u>pending</u></td></tr><tr><td><u>LRF 1998-0102-14, (Pocock)</u></td><td><u>\$1,940.66</u></td><td><u>pending</u></td></tr><tr><td><u>LRF 1998-0102-15, (Toriz)</u></td><td><u>\$2,030.89</u></td><td><u>pending</u></td></tr><tr><td><u>LRF 1998-0102-16, (Ball)</u></td><td><u>\$4,076.93</u></td><td><u>pending</u></td></tr><tr><td><u>LRF 1998-0102-17, (Banks)</u></td><td><u>\$2,161.46</u></td><td><u>pending</u></td></tr><tr><td><u>LRF 1998-0102-18, (Hardy)</u></td><td><u>\$2,177.78</u></td><td><u>pending</u></td></tr><tr><td><u>LRF 1998-0102-19, (Haycock)</u></td><td><u>\$1,874.92</u></td><td><u>pending.</u></td></tr></table> <p><u>In addition, Claimant has filed Notice of Commencement of Action in the following cases, but has not yet filed an application for payment from the fund. These claims total \$64,994.43:</u></p> <table><tr><td><u>NCA-1997-0324-01, against Action Drywall (Lopez),</u></td><td><u>\$3,434.40+</u></td></tr><tr><td><u>NCA-1997-0324-02, agst Action Drywall (Crockett),</u></td><td><u>\$3,434.40+</u></td></tr><tr><td><u>NCA-1997-0324-03, agst Action Drywall (Peterson),</u></td><td><u>\$7,253.63+</u></td></tr><tr><td><u>NCA-1997-0324-04, agst Action Drywall (Gifford),</u></td><td><u>\$7,253.63+</u></td></tr><tr><td><u>NCA-1997-0430-04, agst Const Mgmt Sys (Davis),</u></td><td><u>\$11,626.79+</u></td></tr><tr><td><u>NCA-1997-0918-01, agst James Sherratt (Bolander),</u></td><td><u>\$10,812.29</u></td></tr><tr><td><u>NCA-1998-0209-01, agst Dwaine K. Westover Const</u></td><td></td></tr><tr><td></td><td><u>(Rogers), \$21,179.29</u></td></tr></table> <p><u>Even if claimant filed an application with the fund for each of the above notices of commencement of action, and the fund were to pay every claim, the total would be \$106,872.35, way below the \$500,000 limit per claimant.</u></p>	<u>LRF 1998-0102-01, (McEntire)</u>	<u>\$2,219.13</u>	<u>pending</u>	<u>LRF 1998-0102-02, (Jones)</u>	<u>\$3,255.98</u>	<u>pending</u>	<u>LRF 1998-0102-03, (Baker/Bunting)</u>	<u>\$1,506.64</u>	<u>pending</u>	<u>LRF 1998-0102-04, (Leifson)</u>	<u>\$1,822.63</u>	<u>pending</u>	<u>LRF 1998-0102-05, (Vance)</u>	<u>\$1,787.68</u>	<u>pending</u>	<u>LRF 1998-0102-06, (Prisbey)</u>	<u>\$2,105.37</u>	<u>pending</u>	<u>LRF 1998-0102-07, (Terry),</u>	<u>\$3,058.64</u>	<u>pending</u>	<u>LRF 1998-0102-08, (Secrist),</u>	<u>\$1,780.53</u>	<u>pending</u>	<u>LRF 1998-0102-09, (Van Soest)</u>	<u>\$778.41</u>	<u>pending</u>	<u>LRF 1998-0102-10, (Zastro)</u>	<u>\$2,284.05</u>	<u>pending</u>	<u>LRF 1998-0102-11, (?)</u>	<u>\$1,489.99</u>	<u>pending</u>	<u>LRF 1998-0102-12, (Perez)</u>	<u>\$1,313.32</u>	<u>pending</u>	<u>LRF 1998-0102-13, (?)</u>	<u>\$1,538.91</u>	<u>pending</u>	<u>LRF 1998-0102-14, (Pocock)</u>	<u>\$1,940.66</u>	<u>pending</u>	<u>LRF 1998-0102-15, (Toriz)</u>	<u>\$2,030.89</u>	<u>pending</u>	<u>LRF 1998-0102-16, (Ball)</u>	<u>\$4,076.93</u>	<u>pending</u>	<u>LRF 1998-0102-17, (Banks)</u>	<u>\$2,161.46</u>	<u>pending</u>	<u>LRF 1998-0102-18, (Hardy)</u>	<u>\$2,177.78</u>	<u>pending</u>	<u>LRF 1998-0102-19, (Haycock)</u>	<u>\$1,874.92</u>	<u>pending.</u>	<u>NCA-1997-0324-01, against Action Drywall (Lopez),</u>	<u>\$3,434.40+</u>	<u>NCA-1997-0324-02, agst Action Drywall (Crockett),</u>	<u>\$3,434.40+</u>	<u>NCA-1997-0324-03, agst Action Drywall (Peterson),</u>	<u>\$7,253.63+</u>	<u>NCA-1997-0324-04, agst Action Drywall (Gifford),</u>	<u>\$7,253.63+</u>	<u>NCA-1997-0430-04, agst Const Mgmt Sys (Davis),</u>	<u>\$11,626.79+</u>	<u>NCA-1997-0918-01, agst James Sherratt (Bolander),</u>	<u>\$10,812.29</u>	<u>NCA-1998-0209-01, agst Dwaine K. 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## VII. Amount of Payment

Formal Claim

A1.	B. AMOUNTS CLAIMED (APPLIC. SECTION 3)	C. AMOUNTS SUPPORTED BY EVIDENCE	D. DIFFERENCE (column C - column B = )	E1. EXPLANATION
2. QUALIFIED SERVICES	\$2,019.85	\$1,942.17	\$(77.68)	See Explanation E2 Below
3. COSTS	\$139.80	\$139.80	\$0.00	See Explanation E3 Below
4. ATTORNEY FEES	\$1,248.00	\$640.92	\$(607.08)	See Explanation E4 Below
5. INTEREST	\$154.48	\$36.98	\$(117.50)	See Explanation E5 Below
6. <b>TOTALS</b>	\$3,562.13	\$2,759.87	\$(802.26)	See Explanation E6 Below
7. PRE-JMT EXPENSES	\$1,542.28	\$817.70	\$(724.58)	

### EXPLANATION

E2 Claimant has submitted invoices to support \$1,942.17 for qualified services. (Claim file, pp. 19-24). However, claimant inadvertently added finance charges of \$77.68 when it entered the qualified services amount on p. 3 of claim application.

E3 Claimant has submitted an amended attorney's affidavit for costs including postage, lien claim filing fee, and photocopying. (Claim file, pp. 40-42)

E4 The amended attorney fee affidavit received by the Division on 6/10/98 expressly states the services provided, amount of time involved, and the billing rates. (Claim file, pp. 40-42). The \$1,248.00 claimed is an unreasonable amount for attorney's fees. (33% of the qualified services as allowed by rule would be  $33\% \times \$1,942.17 = \$640.92$ )

E5 Claimant's interest was calculated at the rate of 24% apr to 12/25/97 per agreement and invoices. (Claim file, pp. 19-24) However, in formal claims, Rule R156-38-204d(2)(c) allows only 5% interest from date payment was due to date claim was filed.

Invoices in this case provide that payment is due on the first of the month following purchase. (Claim file, pp. 19-24). Therefore, invoices for purchases in June 1997 were due on 7/1/97. The claim was filed on 11/17/97, 139 days after 7/1/97. The calculation of interest is shown in the table below.

E6 See Explanation in E3 and E5 above.

#### INVOICES - CALCULATION OF 5% INTEREST

INV. #	INV. AMT	x 5% =	/ 365 DAYS = INTEREST PER DAY	NO. OF DAYS	x INT PER DAY = INT. ON INVOICE	TOTAL INT. ALL INVOIC.
1.	\$1,669.71	\$83.4855000	\$0.2287274	139	\$31.79	\$31.79
2.	\$7.94	\$0.3970000	\$0.0010877	139	\$0.15	\$31.94
3.	\$176.29	\$8.8145000	\$0.0241493	139	\$3.36	\$35.30
4.	\$88.23	\$4.4115000	\$0.0120863	139	\$1.68	\$36.98
TOT.	\$1,942.17				\$36.98	

## VIII. Demographic Data

Source: Claimant's Demographic Questionnaire.

1. Type of business entity used by claimant: <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Joint Venture <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Other
2. Number of employees employed by claimant: <input type="checkbox"/> None <input type="checkbox"/> 1-4 <input type="checkbox"/> 5-9 <input type="checkbox"/> 10-19 <input type="checkbox"/> 20-49 <input type="checkbox"/> 50-99 <input checked="" type="checkbox"/> 100+
3. Claimant's gross annual revenue: <input type="checkbox"/> 0-\$9,000 <input type="checkbox"/> \$10,000-\$49,000 <input type="checkbox"/> \$50,000-\$99,000 <input type="checkbox"/> \$100,000-\$249,000 <input type="checkbox"/> \$250,000-\$499,000 <input type="checkbox"/> \$500,000-\$999,000 <input type="checkbox"/> \$1,000,000-\$4,999,000 <input checked="" type="checkbox"/> \$5,000,000+
4. Number of years claimant has been in business: <input checked="" type="checkbox"/> 0-1 <input type="checkbox"/> 2-4 <input type="checkbox"/> 5-9 <input type="checkbox"/> 10-14 <input type="checkbox"/> 15-19 <input type="checkbox"/> 20+
5. Capacity in which claimant is claiming: <input type="checkbox"/> General Contractor <input type="checkbox"/> Subcontractor <input checked="" type="checkbox"/> Supplier <input type="checkbox"/> Other _____
6. Is claimant licensed through DOPL? <input checked="" type="checkbox"/> yes <input type="checkbox"/> no
7. Type of business entity used by non-paying contractor or real estate developer, if known: <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Joint Venture <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Unknown
8. Number of employees employed by non-paying party, if known: <input type="checkbox"/> None <input type="checkbox"/> 1-4 <input type="checkbox"/> 5-9 <input type="checkbox"/> 10-19 <input type="checkbox"/> 20-49 <input type="checkbox"/> 50-99 <input type="checkbox"/> 100+ <input checked="" type="checkbox"/> Unknown
9. Non-paying party's gross annual revenue, if known: <input type="checkbox"/> 0-\$9,000 <input type="checkbox"/> \$10,000-\$49,000 <input type="checkbox"/> \$50,000-\$99,000 <input type="checkbox"/> \$100,000-\$249,000 <input type="checkbox"/> \$250,000-\$499,000 <input type="checkbox"/> \$500,000-\$999,000 <input type="checkbox"/> \$1,000,000-\$4,999,000 <input type="checkbox"/> \$5,000,000+ <input checked="" type="checkbox"/> Unknown
10. Number of years non-paying party has been in business, if known: <input type="checkbox"/> 0-1 <input type="checkbox"/> 2-4 <input type="checkbox"/> 5-9 <input type="checkbox"/> 10-14 <input type="checkbox"/> 15-19 <input type="checkbox"/> 20+ <input checked="" type="checkbox"/> Unknown
11. Is non-paying party licensed through DOPL? <input type="checkbox"/> yes <input type="checkbox"/> no <input checked="" type="checkbox"/> Unknown

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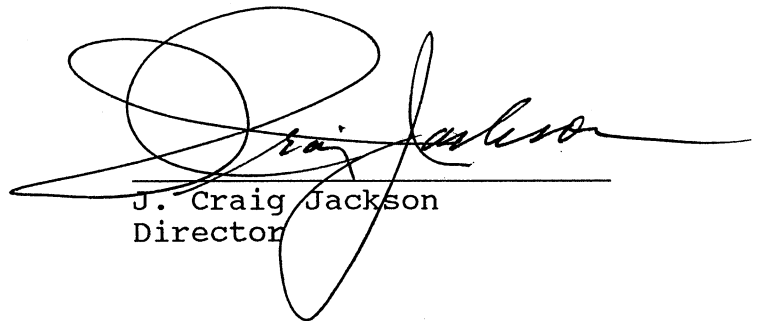
BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING  
OF THE DEPARTMENT OF COMMERCE  
OF THE STATE OF UTAH

IN THE MATTER OF THE LIEN RECOVERY	:	
FUND CLAIM OF J & J BUILDING SUPPLY	:	O R D E R
INC. RELATING TO THE CONSTRUCTION BY	:	
INTERIOR STRUCTURES, INC. ON THE	:	LRF Claim No.
RESIDENCE OF TOM N. AND JENNIFER BAILEY	:	1997-1117-01
	:	

The attached Findings of Fact, Conclusions of Law and Recommended Order are hereby adopted by the Director of the Division of Occupational and Professional Licensing of the State of Utah.

Dated this 23<sup>rd</sup> day of July, 1998.



  
\_\_\_\_\_  
J. Craig Jackson  
Director

Agency review of this Order may be obtained by filing a request for agency review with the Executive Director, Department of Commerce, within thirty (30) days after the date of this Order. The laws and rules governing agency review are found in Section 63-46b-12 of the Utah Code, and Section R151-46b-12 of the Utah Administrative Code.

BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING  
OF THE DEPARTMENT OF COMMERCE  
OF THE STATE OF UTAH

IN THE MATTER OF THE LIEN RECOVERY	:	FINDINGS OF FACT
FUND CLAIM OF J & J BUILDING SUPPLY	:	CONCLUSIONS OF LAW
INC. RELATING TO THE CONSTRUCTION BY	:	AND RECOMMENDED ORDER
INTERIOR STRUCTURES, INC. ON THE	:	LRF Claim No.
RESIDENCE OF TOM N. AND JENNIFER BAILEY	:	1997-1117-01
	:	

**Appearances:**

Terry L. Wade for Claimant

Tony R. Patterson for the Division of Occupational and  
Professional Licensing

**BY THE BOARD:**

A June 17, 1998 hearing was conducted in the above-entitled proceeding before J. Steven Eklund, Administrative Law Judge for the Department of Commerce, and the Residence Lien Recovery Fund Advisory Board. Board members present were Clint Techmeyer, Dee Young, Grant F. Weller, Steven Bankhead and Lynn B. Larsen. The remaining Board members, Cal Thornton and Jimmy Zufelt, were absent. J. Craig Jackson, Director of the Division of Occupational and Professional Licensing, was also absent.

Claimant initially submitted a June 10, 1998 memorandum, requesting additional information be reviewed by the Board prior to the June 17, 1998 hearing. The memorandum included various exhibits and argument on the issue to be addressed by the Board. The Division filed a June 15, 1998 responsive memorandum. Claimant and the Division also submitted a joint stipulation, respectively dated June 12, 1998 and June 15, 1998. Accordingly,

the Board reviewed the just-described submissions prior to the June 17, 1998 hearing.

During the June 17, 1998 hearing, Claimant made a proffer of evidence to the Board. Respective counsel presented oral argument on the issue to be resolved. The hearing concluded June 17, 1998 and the Board then conducted initial deliberations at that time. The Court was present during those deliberations, as was Jeffrey C. Hunt, Assistant Attorney General and legal advisor to the Board.

Mr. Wade subsequently contacted the Court by telephone on June 17, 1998. He also submitted a June 17, 1998 letter to the Court and Mr. Patterson by facsimile transmission on that date. Based on a June 17, 1998 posthearing teleconference with respective counsel, the Court informed Mr. Wade and Mr. Patterson that the just-described letter would be included in the record of this proceeding and a copy of the letter would be provided to the Board for its review prior to the submission of findings, conclusions and a recommendation in this proceeding.

The Court also conducted a July 10, 1998 posthearing teleconference with Mr. Wade and Mr. Patterson. The Court thus informed respective counsel that the Board has not concluded its deliberations in this proceeding, the terms of two Board members (Mr. Young and Mr. Larsen) expired June 30, 1998 and a question exists whether those Board members may properly continue to participate in this proceeding. Claimant and the Division agreed all Board members who were present at the June 17, 1998 hearing

should continue to act in this proceeding. Based on the foregoing, Claimant and the Division waived any objection to the composition of the Board.

The Board reviewed the June 17, 1998 letter and concluded further deliberations in this case. The Board, now being fully advised in the premises, enters its Findings of Fact, Conclusions of Law and submits the following Recommended Order to the Division for review and action:

#### **FINDINGS OF FACT**

1. Based on Claimant's application, supporting documentation relative thereto and the joint stipulation between Claimant and the Division, Claimant has satisfied all requirements necessary for payment from the Residence Lien Recovery Fund other than the remaining issue to be addressed and resolved by the Board.

2. The original contractor on the Bailey residence was Aaron Needham, dba D.T. Development, Inc. The Baileys entered into the contract with Mr. Needham for the construction of the residence in question on April 24, 1997. Claimant furnished supplies to Mr. Needham between June 7 - 18, 1997, which were used in the construction of the Bailey residence.

3. There is a lack of substantial evidence to find the Baileys knew D.T. Development, Inc. was not licensed when the above-described contract was executed. Mr. Needham subsequently obtained his contractor's license June 24, 1997.

4. Claimant contacted the Baileys on or about October 23,

1997 to obtain information necessary to enable Claimant to satisfy the requirements of the Residence Lien Restriction and Lien Recovery Fund Act. Claimant requested the Baileys provide copies of any documents to establish that the original contractor was licensed when the Baileys entered into the contract for the construction of their residence.

5. The Baileys subsequently provided Claimant with an October 29, 1997 affidavit, executed by Mr. Needham, wherein he averred that D.T. Development, Inc. was licensed as a general contractor with the State of Utah "at all times" relative to the construction of the Bailey residence. Claimant did not know Mr. Needham was not licensed when his contract with the Baileys was executed.

6. Claimant relied on the information thus provided from Mr. Needham - through the Baileys - and accordingly released the mechanic's lien which Claimant had placed on the Bailey residence on November 19, 1997. Claimant filed a complaint against the Baileys on or about June 11, 1998, due to their failure to have required Mr. Needham to obtain a performance bond on the construction of their residence. The just-described complaint was timely filed within the applicable statute of limitations.

7. The qualified services provided by the Claimant - if awarded from the Fund - would total \$1,942.17. Prejudgment costs would be \$139.80, any allowable prejudgment interest totals \$36.98 and attorney fees would total \$640.92. Thus, the pending claim for recovery from the Fund would be \$2,759.87.

### CONCLUSIONS OF LAW

Claimant acknowledges Mr. Needham was not licensed when the Baileys entered into the contract for the construction of their residence. However, Claimant asserts it had no duty to independently ascertain Mr. Needham's licensure status by inquiry to the Division. Claimant urges it justifiably relied on Mr. Needham's subsequent representation that he was appropriately licensed relative to his contract with the Baileys.

Claimant thus contends it reasonably believed all requirements for recovery from the Fund had been satisfied. Accordingly, Claimant released its lien on the Bailey residence. Claimant now urges it has incurred significant expenses in its attempt to perfect a claim against the Fund. Claimant thus requests the claim should be paid because there has been substantial compliance with the statutory requirement in question. Otherwise, Claimant asserts additional expenses would be incurred if it were required to proceed directly against the Baileys.

The Division contends a fundamental prerequisite for recovery from the Fund is that the owner of the residence in question have a written contract with an original contractor who was duly licensed when that contract was executed. The Division asserts no claim can be maintained against the Fund if the original contractor was not so licensed, notwithstanding the fact that the original contractor became licensed prior to completing the construction of the residence.

The Division concedes Claimant relied - in good faith - on the misrepresentation regarding the original contractor's licensure status. However, the Division argues such good faith reliance does not obviate the need for full compliance with each statutory requirement incident to any recovery from the Fund.

The Division further contends protection under the Act would not be available for any homeowner who failed to enter into a written contract with a duly licensed contractor. Accordingly, the Division urges any supplier - such as Claimant - should also be unable to recover from the Fund under those circumstances.

U.C.A. §38-11-204(3) provides:

To recover from the fund..., a qualified beneficiary shall establish that:

(a) (i) the owner of the owner-occupied residence . . . entered into a written contract with an original contractor licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for the performance of qualified services, to obtain the performance of qualified services by others, or for the supervision by others of qualified services in construction on that residence . . . .

The unequivocal and unambiguous language of Section 38-11-204(3)(a) is consistent with Section 58-55-501(1), whereby it is unlawful for a person to engage in a construction trade or act as a contractor unless that person is duly licensed or exempted from licensure. Those statutes are premised on a common legislative intent to protect the public by: (1) allowing only individuals who are duly licensed or exempted from licensure to engage in the

construction trades in this state; and (2) precluding any recovery from the Fund if the original contractor was not licensed.

Moreover, §58-55-604 provides:

No contractor may act as agent or commence or maintain any action in any court of this state for collection of compensation for performing any act for which a license is required by this chapter without alleging and proving that he was a properly licensed contractor when the contract sued upon was entered into, and when the alleged cause of action arose. (All emphasis herein added.)

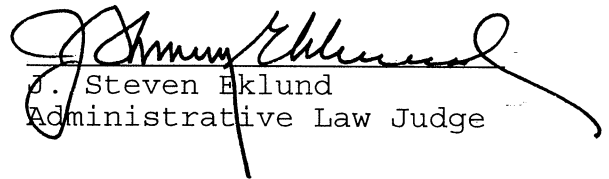
Given the similarity of the language contained in Section 38-11-204(3)(a)(i) and Section 58-55-604, the Board readily finds and concludes no original contractor or other qualified beneficiary may recover from the Fund if the original contractor was not duly licensed when the contract in question was executed.

The Board duly acknowledges it may be somewhat harsh and arguably inequitable to deny Claimant recovery from the Fund under the circumstances presented in this case. However, this Board lacks any authority to disregard the statutory requirements which unmistakably govern possible recovery from the Fund. Accordingly, the Board finds and concludes Claimant has not established the necessary factual and legal basis for any such recovery in this case.

#### **RECOMMENDED ORDER**

WHEREFORE, IT IS ORDERED Claim No. LRF-1997-1117-01 is denied, consistent with the views expressed herein.

On behalf of the Residence Lien Recovery Fund Advisory Board, I hereby certify the foregoing Findings of Fact, Conclusions of Law and Recommended Order were submitted to J. Craig Jackson, Director of the Division of Occupational and Professional Licensing, on the 22<sup>nd</sup> day of July, 1998 for his review and action.

  
J. Steven Eklund  
Administrative Law Judge